

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MIGUEL JOSE MORA,

Defendant and Appellant.

B286329

(Los Angeles County  
Super. Ct. No. GA100893)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael Villalobos, Judge. Affirmed as modified.

Joseph R. Escobosa, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Kenneth C. Byrne and Nicholas J. Webster, Deputy Attorneys General, for Plaintiff and Respondent.

---

A jury found Miguel Jose Mora (Mora) guilty of one count of elder abuse and one count of assault with force likely to produce great bodily injury. The trial court sentenced Mora concurrently on the two counts. On appeal, he contends his sentence on the assault count should have been stayed under Penal Code section 654.<sup>1</sup> As we now discuss, we agree and modify the judgment.

Robert Melendrez was 80 years old on March 14, 2017. On that day, he was at a restaurant. Mora, who had been previously told he was not welcome at the restaurant, was also there. When Melendrez overheard Mora threaten the restaurant's owner, Melendrez intervened and told Mora he shouldn't threaten the owner or the police might be called. Mora called Melendrez an " 'old man' " and told him it was none of his business. Melendrez ignored Mora's challenge to " 'go outside,' " and Mora left through the front door. Minutes later, Melendrez left through the back door. Mora suddenly appeared and blocked Melendrez from getting into his car. Mora said, " 'Okay. Here I am. What do you want to do?' " He spat at Melendrez and punched him in the head, causing Melendrez to fall and to pass out. Melendrez fractured his shoulder and hip, which required surgery and rehabilitation.

Based on these events, an information was filed charging Mora with elder abuse (§ 368, subd. (b)(1); count 1) and assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(4); count 2). The information also alleged as to both counts a great bodily injury enhancement on a person over 70 years old (§ 12022.7, subd. (c)). A jury found Mora guilty of both counts and found the enhancements true. On October 18, 2017,

---

<sup>1</sup> All further statutory references are to the Penal Code.

the trial court sentenced Mora to three years plus a consecutive five years for the enhancement on count 1, for a total sentence of eight years. The trial court sentenced him to a concurrent eight year term on count 2 and, over defense counsel's objection, found that section 654 did not apply.

On appeal, defendant reiterates that section 654 bars punishment on both counts. Section 654, subdivision (a), provides that "[a]n act or omission . . . punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but [not] . . . under more than one provision." The section thus bars multiple punishments for offenses arising out of a single occurrence where all were incident to an indivisible course of conduct or a single objective. (*People v. Correa* (2012) 54 Cal.4th 331, 335; *People v. Jones* (2012) 54 Cal.4th 350, 358.) Section 654 involves a two-step inquiry. (*People v. Corpening* (2016) 2 Cal.5th 307, 312.) "We first consider [whether] the different crimes were completed by a 'single physical act.'" (*Ibid.*) If so, then the defendant may not be punished more than once for that act and we need not proceed to the second inquiry, whether the course of conduct reflected a single intent and objective or multiple ones. (*Ibid.*) Whether section 654 applies is usually a question of fact for the trial court, and we review its findings in the light most favorable to the respondent and presume the existence of every fact the trial court could reasonably deduce from the evidence. (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.)

Here, Mora's crimes were based on the same act and on a single intent and objective. That is, elder abuse requires a willful infliction of unjustifiable physical pain or mental suffering, under

circumstances likely to produce great bodily harm, on a person the defendant knows to be elderly. (§ 368.) Similarly, Mora's assault conviction required him willfully to commit an act that by its nature would directly and probably result in the application of a force likely to result in great bodily injury. (§ 245, subd. (a)(4).) Mora's crimes resulted from the single physical act of punching Melendrez. That act produced great bodily injury to an 80-year-old man, and it therefore completed both crimes. Mora cannot be punished for elder abuse *and* for the assault.

### **DISPOSITION**

The judgment is modified by staying execution of the sentence on count 2 under Penal Code section 654, such stay to become permanent on completion of Miguel Jose Mora's remaining sentence. The clerk of the superior court is directed to prepare a modified abstract of judgment and to forward it to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

EDMON, P. J.

LAVIN, J.